

215605

BEFORE THE  
SURFACE TRANSPORTATION BOARD



PYCO INDUSTRIES, INC. -- )  
ALTERNATIVE RAIL SERVICE -- ) F.D. 34802  
SOUTH PLAINS SWITCHING LTD. )

ENTERED  
Office of Proceedings

PETITIONER PYCO INDUSTRIES'  
OBJECTIONS to SAW's 19 JANUARY LETTER

JAN 20 2006

Part of  
Public Record

Incumbent railroad South Plains Switching (SAW) on January 19, 2006, electronically filed another letter in this proceeding, presenting a newspaper article from a Lubbock newspaper discussing an alleged truck shortage for transporting cotton bales in and around Lubbock, Texas. SAW's letter asks for "the record volume of cotton being tendered for transportation by PYCO Industries and other cotton shippers in evaluating the rail service provided by [SAW]."

PYCO Industries has two objections to SAW's latest letter.

-- First, it is neither a permissible pleading (it is not allowed under 49 C.F.R. Part 1146 or 49 C.F.R. 1104.13(c)) and should be stricken from the record.

-- Second, it provides confusing information and is just another example of SAW's game of smoke and mirrors. In particular, it suggests or at least assumes that PYCO is shipping cotton by rail. PYCO is not. PYCO depends on rail for shipment of cottonseed oil. To this end, PYCO uses tanker cars (PYCO owns a fleet of them), and tanker cars are not suitable for shipping cotton bales (which is what the article is about that SAW furnished the Board). PYCO also depends on rail for

shipment of cottonseed. To this end, PYCO uses gondola cars (in particular, gondola cars owned by a customer). Gondola cars are not suitable for shipping cotton bales either.

But more to the point, SAW seems to be suggesting or admitting that it lacks capacity to service PYCO due to greater demand due to an alleged record cotton harvest. However, in SAW's last pleading (a January 6 letter purportedly filed as a Petition under 49 CFR 1117.1), SAW seemed to claim that it had adequate personnel and equipment (it asserted it had multiple locomotives and engineers) to service PYCO's needs.

This is not a game. SAW cannot on January 6 claim it has capacity to serve PYCO and then on January 19 intimate it does not. The plain fact is that SAW is not meeting PYCO's needs because SAW is retaliating against PYCO for PYCO's audacity (in the view of SAW's management) to complain to STB's Office of Compliance and Enforcement about inadequate rail service, and because PYCO politely declined to pay SAW \$5,500,000 for undisclosed assets of SAW, without even an opportunity for rudimentary due diligence. SAW has never denied that it is retaliating. Retaliatory partial embargoes like this are a prima facie violation of the common carrier obligation set forth in 49 U.S.C. § 11101(a), and are an unreasonable practice in violation of 49 U.S.C. § 10702.

The January 19 electronically filed letter and attachment tendered on behalf of SAW should be stricken from the record.

Prior to November 17, 2005, PYCO was shipping 15 to 20

gondola cars per day of cottonseed alone from Plant No. 1. PYCO was shipping out additional tanker cars of cottonseed oil, and hopper cars of cottonseed meal, plus a few boxcars. After SAW instituted its retaliatory partial embargo on November 17, PYCO has been able to ship out only 12 cars total from Plant No. 1--this amount is less than half PYCO's pre-November 17 shipment rate. This is not due to a car shortage. As noted, PYCO owns its own fleet of tanker cars, and its cottonseed customer makes gondola cars available from the customer's fleet. The reason for the shortfall of service has nothing to do with this year's cotton crop (which is similar to the crop last year). The reason for the shortfall of service instead lies with the willful actions and inactions of SAW and its management, and their mal-practice of retaliation. Perhaps that it is in part due to SAW's lack of equipment and personnel. SAW itself seems unable to take a consistent position on that point.

PYCO needs adequate rail service. PYCO renews its request for same.

Respectfully submitted,



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Declaration in Lieu of Verification

Pursuant to 28 U.S.C. § 1746, I, Gail Kring, declare and verify under penalty of perjury under the laws of the United States of America that I am the Manager and Chief Executive Officer of PYCO Industries, Inc., that I have read the forgoing and that I confirm and verify that all facts stated therein are true and correct.

Executed on:

Gail Kring  
1-19-06